IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

ORDER

S.B.CRIMINAL MISC. PETITION NO. 89/2007

(Jabbar Singh V/s State of Rajasthan & Anr.)

Date of Order : 06/07/2007

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. N.L.Joshi, for the petitioner.

BY THE COURT:-

By the instant criminal misc. petition under Section 482 Cr.P.C., the petitioner has challenged the order dated 8.1.2007 passed by Additional Chief Judicial Magistrate, Jalore (for short 'the trial court' hereinafter) whereby the trial court allowed the application filed by the complainant under Section 319 Cr.P.C. and issued the process against the petitioner by adding the petitioner as accused in the case.

I have heard learned counsel for the petitioner.

It is contended by learned counsel for the petitioner that though the petitioner and co-accused Amar Singh have been shown armed with axe but PW-1 Pradeep suffered single injury by axe. Learned counsel has further contended that in the first

information report lodged by first informant respondent No.2 Pradeep Singh though the petitioner was specifically named but after investigation, the police did not find any case against the petitioner and therefore, a challan was filed against remaining persons Jalam Singh, Narayan Singh and Amarsingh. Learned counsel submits that the power under Section 319 Cr.P.C. are to be exercised sparingly and only if compelling reasons exist. According to the learned counsel there being no compelling reasons before the trial court to exercise the power under Section 319 Cr.P.C. Learned counsel for the petitioner has relied on a decision of Hon'ble Supreme Court in Krishnappa Vs. State of Karnataka 2004 (6) Supreme 432 wherein Hon'ble Supreme Court held that it has been repeatedly held that the power to summon an accused is an extraordinary power conferred on the court and should be used very sparingly and only if compelling reasons exist for taking cognizance against the other person against whom action has not been taken. Though an order under Section 319 Cr.P.C., summoning a person can be made on fulfillment of the conditions stipulated therein even when the proceedings had earlier been quashed. In that case, the Magistrate did not dismiss the application merely on the ground of the proceedings having been quashed against the appellant. The Magistrate first on examination of evidence, came to the conclusion that the possibilities of the appellant being convicted

were remote and thereafter, made a passing reference to the factum of the proceedings having been quashed in the year 1995.

In the instant case, non-petitioner No.2 Pradeep lodged an FIR with the police categorically stating therein that petitioner Jabbar Singh and co-accused Jalam Singh, Narayan Singh and Amar Singh came armed with Lathies and axe and caused simple and grievous injuries. It has also been stated that at the relevant time, his mother and sister came and rescued. The police registered the crime report and investigated the matter. After investigation, police led challan against the persons named in the FIR except the petitioner. Learned counsel for the petitioner submits that the petitioner is an employee of the Statistic Department working as Assistant Statistics and at the relevant time, he was 20 kilometers away from the place of occurrence as his attendance has been marked in the Statistic department and on the strength of the attendance marked in the attendance register, the petitioner came with a plea of alibi.

Before the trial court, the prosecution examined various witnesses namely PW-1 Pradeep Singh, PW-2 Kuldeep Singh both injured and independent eye witnesses Sarjeev Kanwar and Santosh Kanwar. PW-1 Pradeep Singh categorically stated that petitioner Jabbar Singh had an axe in his hand and the petitioner inflicted injury on his head. PW-2 Kuldeep Singh

also stated that petitioner Jabbar Singh inflicted injury by axe to PW-1 Pradeep though PW-2 stated that Amar Singh was also armed with axe. The independent eye witnesses Sarjeev Kanwar and Santosh Kanwar also stated that petitioner Jabbar Singh was present at the place of occurrence armed with axe and participated in the causing of injuries. It has categorically been stated that petitioner Jabbar Singh caused axe blow to injured Pradeep Singh. The trial court satisfying with the evidence produced before it, prima-facie came to the conclusion that the petitioner not being an accused in the case committed the offence and therefore, while allowing the application under Section 319 Cr.P.C. took the cognizance of the offence against the petitioner and issued the process. In my view, there is sufficient material before the trial court to proceed under Section 319 Cr.P.C. Merely because powers under Section 319 Cr.P.C. are to be exercised sparingly will not preclude the Magistrate to exercise such power, on the contrary if the Magistrate found that there is strong case on the basis of the evidence then normally in such circumstances, Section 319 Cr.P.C. empowers the Magistrate to proceed against such persons.

Section 319 Cr.P.C. reads as under:-

> "319. Power to proceed against other persons appearing to be guilty of offence.- (1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being

the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

(2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under sub-section (1) then-

(a) the proceedings in respect of such person shall be commenced afresh, and the witnesses re-heard;

(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced."

In this view of the matter, in my view, the trial court committed no error in taking cognizance of the offence and issuing process against the petitioner after having been added him as accused in the case. The decision relied on by counsel for

the petitioner turns on its own facts and is of no help to the petitioner.

No case for interference is made out. The criminal misc. petition is therefore, dismissed.

(H.R.PANWAR),J.

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